



One Made it Out of the Debt Trap

Lessons from the London Debt Agreement of 1953
for Current Debt Crises

JÜRGEN KAISER
June 2013

- Among modern sovereign debt restructurings, the little-known London Debt Agreement for Germany is an early and important example – not least, because it was so successful in restoring West Germany's debt sustainability.
- Beyond the sheer level of relief it provided, the London Debt Agreement shows some »qualitative« dimensions, the lack of which makes present-day restructurings so protracted and painful. They include a conditioning of debt service upon trade surpluses, the possible recourse to arbitration, and the comprehensive character of the negotiation, which included most types of claims on the German economy.
- Comparing the London Debt Agreement to recent restructurings in Greece, Iraq, and Burundi demonstrates how overall, and in important details, a »London-style« process would have delivered – or still could deliver – faster and more sustainable debt restructuring.



Contents

Introduction	1
1. The London Debt Agreement of 1953: Facts, Figures, and Background	3
1.1 West Germany's Economic Situation at the Beginning of the 1950s.	3
1.2 History and Structure of Germany's External Debt	3
1.3 The London Debt Conference	4
1.4 The Agreed Debt Relief for Germany	5
2. Debt Relief for Germany in the Perspective of Subsequent Sovereign Debt Crises ..	5
3. The Qualitative Elements of Germany's Debt Relief and Their Implications	8
3.1 The Conference Set-up: Negotiations among Equals	8
3.2 The Comprehensive Character of the London Debt Agreement	10
3.3 Debt Sustainability as a Result of Trade Surpluses	12
3.4 Commitment to Resolve Interpretational Disputes through Consultations and Dispute Resolution Mechanisms	16
4. Objections Raised Against the Comparison with Present-Day Sovereign Debt Crises	18
5. Learning from London	20
References	22

Introduction

For the Federal Republic of Germany (West Germany), 27 February 1953 was a historic day. This was when the London Debt Agreement of 1953 on German External Debt was signed in the British capital, by partners who had been war enemies only a few years earlier: on the one hand, the new Federal Republic, which proclaimed itself to be the (sole) successor of the German Reich; on the other, the governments and private creditor representatives, most of whom came from the former Western Allies. Through much of the negotiation process that led to the agreement, the creditors had been represented by the United Kingdom (UK), France, and the United States (US) – who jointly constituted the Tripartite Commission on German Debt (TCGD). In all, representatives of 20 signatory states took part in the signing ceremony.¹ After the signing, several other states also became parties to the agreement and restructured their claims on West Germany accordingly. The agreement came into force on 16 September 1953, when it was ratified by all three governments of the Tripartite Commission through their respective constitutional processes. It then became binding for all 20 signatories; others followed.

The London Debt Agreement relieved the young Federal Republic of external debts to the sum of nearly 15 billion Deutsche Mark – i. e., about 50 per cent out of a total external debt of 30 billion Deutsche Mark, consisting of both pre- and post-war debts. This debt relief represented roughly 10 per cent of West Germany's GDP in 1953, or 80 per cent of its export earnings that year. Although West Germany's pre-relief debt ratios of 20 per cent and 160 per cent respectively are relatively low for today's standards, it should be noted that its currency was still not fully convertible at the time, and so the debt indeed implied a considerable problem for West Germany's future development. In particular, the debt stock in relation to annual export earnings – slightly above present-day indicative threshold for heavily indebted poor countries – was considered to be critical. The Lon-

don Debt Agreement, with its very generous conditions, made a significant contribution to West Germany's post-war »economic miracle« of the 1950s and 1960s, and to a speedy reconstruction of the war-torn country. Few sovereign debt restructurings have so clearly marked the transition from critical indebtedness to a situation where debt is no longer an obstacle to economic and social development. The agreement remains one of the few historical examples of how circumspect and sustainable a debt workout can be – if the political will is there. Consequently, its sheer success makes it worth considering as a possible example and guidance for the current discussion about debt relief – not only for countries from the Global South, but even more so in the context of the present sovereign insolvency crisis within the Eurozone. A closer review is even more warranted, given that generous debt relief and implicit pardon was provided to a nation that had less than 10 years before inflicted upon the whole European continent and beyond the most devastating man-made catastrophe of modern history.

Why was this kind of a sustainable solution granted to this particular debtor at that particular time? Of course, neither a sovereign debt problem nor a specific solution can be understood in isolation from the international political and financial context. In Germany's case, these were the times of the Cold War and the system competition between the West on the one side, and the Soviet Union and its allies on the other. There was a great deal of interest on the part of the major creditors, the US and to a lesser extent the UK, in stabilising the country both politically and economically as quickly as possible.

These intentions were clearly expressed in the preamble of the London Debt Agreement, where it says that the treaty was based on the desire to: »remove obstacles to normal economic relations between the Federal Republic of Germany and other countries and thereby to make a contribution to the development of a prosperous community of nations«.

Only as a prosperous and stable country out of the ashes of the Third Reich could West Germany function as a showcase of Western-style democracy and the »bulwark against communism« it was supposed to become. Moreover, there was a strong sense of lessons learned from Versailles – i. e., the mistake of burdening a defeated war enemy with an economic tribute, that would destabilize it for decades and thus pave the way for political radicalisations of all sorts.

1. Belgium, Ceylon (today: Sri Lanka), Denmark, France, Greece, Iran, Ireland, Italy, Yugoslavia, Canada, Liechtenstein, Luxembourg, Norway, Pakistan, Sweden, Switzerland, Spain, South Africa, UK, USA. Until 1963, the following countries and territories, including then colonies, also became parties to the Agreement: Aden (today a part of Yemen), Egypt, Argentina, Australia, Belgian Congo (today Democratic Republic of the Congo, DRC), British Channel Islands, Chile, Finland, Falkland Islands, Gibraltar, Israel, Cambodia, Cameroon, Canada, Malta, Morocco, New Guinea and Nauru, New Zealand, Netherlands, North Rhodesia and Njassaland (today Zambia and Malawi), Austria, Peru, Syria, and Thailand.

Looking at creditors' behaviour towards debtor states in both the Global South and the European periphery, suggests that far-sighted considerations of enlightened economic self-interest and political stability do not count for very much at present: if debt relief for indebted sovereign comes, it regularly comes late, is piecemeal and is usually conditioned on stringent austerity and structural adjustment measures that tend to drive highly indebted economies even deeper into recession and poverty; at least for a certain, but quite often protracted period of time.

Beyond its economic and political wisdom, the London Debt Agreement gains additional political importance from the fact that the Federal Republic of Germany today is an important creditor to almost all critically indebted countries in the world. Thus, Germany regularly sits at the negotiating table whenever sovereign debt is being negotiated. Even in the Eurozone crisis, the Federal Republic of Germany happens to be the single most important party on the creditor side. It is perceived as the driving force behind any decision that has been taken by the »troika«² on domestic reforms and debt restructuring in the debtor countries. It is an irony of history that some of today's European crisis countries, as well as the colonial precursors of past debt-ridden countries in the Global South, were parties to the London Debt Agreement 60 years ago. These former creditors include Greece and Ireland, among others.³

Surprisingly, little knowledge about Germany's debt relief is to be found among the broader public in Germany or in former creditor countries. This paper will first give a relatively short account of the London Debt Agreement in Chapter 1 based on: earlier research by *erlassjahr.de*; the groundbreaking paper by Thomas Kampffmeyer; the detailed history of the negotiation process by historian Rombeck-Jaschinsky; and, not least, the memoirs of the leader of West Germany's negotiating team, banker Hermann-Josef Abs. However, the Agreement will only be discussed as much as it is necessary to give a background for possible lessons for common debt restructuring practices of today, which is the central part of this paper.⁴

2. The European Central Bank (ECB), the European Commission, and the International Monetary Fund (IMF).

3. The amounts claimed – and negotiated – by those and other minor creditors could not be reliably identified, but they would have been relatively small. Gurski (1955) identifies under »others«, claims of 133.5 million Deutsche Mark, 1 billion Reichsmark, and 3.8 million Goldmark.

4. For more detailed information about the agreement, see: Huetz-Adams (1998), Hersel (2001), Kampffmeyer (1987), Abs (1990), Kaiser (2003), Rombeck-Jaschinski (2005).

In fact, the London Debt Agreement had a number of guiding principles and regulations, from which current sovereign debt restructuring can at least draw some inspiration.

To highlight the features identified as important aspects of the London Debt Agreement, we compare them to the way these aspects have been dealt with in three present-day debt restructurings. In chapter 2, we give a brief account of the three comparative cases chosen: Iraq (2004–2005), as a case of post-war reconstruction after regime change; Burundi (2005), as an example of a highly indebted poor country that obtained debt relief through HIPC/MDRI initiatives; and Greece, as a current and still ongoing sovereign debt crisis. Chapter 3 constitutes the core of this paper. Here, we discuss four qualitative elements of the London Debt Agreement, which are particularly relevant for modern debt restructurings, and compare the German example to the other three case studies with regard to each of these elements. The features and regulations of the London Debt Agreement to be highlighted are as follows:

- In the London Debt Conference, creditors and debtors negotiated as equals.
- The London Debt Agreement was comprehensive in the sense that it included almost all public and private German pre- and post-war debt obligations.
- Debt service was to be financed exclusively from current (export) income without taking recourse to (currency) reserves or assuming new debt in order to pay off the existing obligations.
- Disputes about the Agreement's interpretation were to be solved, as a matter of principle, through consultations or an arbitration process rather than through creditors' unilateral decisions.

Chapter 4 addresses some of the arguments against the comparability of the agreement with present-day debt relief operations, which have been raised during public discussions about the London Debt Agreement in Germany and elsewhere, or in discussions with German authorities.

Chapter 5 formulates some generalised lessons from London, for current debt workouts.

1. The London Debt Agreement of 1953: Facts, Figures, and Background

1.1 West Germany's Economic Situation at the Beginning of the 1950s

The Federal Republic of Germany (West Germany) was founded in 1949, four years after the end of the Second World War, on the territory formerly occupied by the three Western powers (US, UK, France). Its first years of existence were marked by extreme economic challenges, the most pressing of which included: the substantial destruction of its industry and infrastructure caused by the war; the removal of industrial and other capital equipment as war reparations by the allied victors in the years immediately after the war; and the need to integrate not less than 10 million people driven out of the former Eastern provinces of the defunct German Reich.

West German society quickly found consensus around the fairly successful formula of a »social market economy«, which became somewhat of a trademark of the young state. Furthermore, Germany benefitted from a skilled and well-educated labour force – albeit part of it only trickled back home, as prisoners of war were released first by the Western Allies and later by the Soviet Union. Last but not least, there was the commitment by the US to provide both economic aid and private investment. The result was the emergence of a fairly well-integrated economy, which quickly lived up to its potential regarding both the provision of income and employment and the stabilisation of the political system.

1.2 History and Structure of Germany's External Debt

On 6 March 1951, the West German government in principle assumed responsibility for all external obligations of the extinct German Reich. This was a consequence of the state doctrine that the second, and by far smaller German state – the German Democratic Republic (GDR) that emerged from the Soviet occupation zone in East Germany – did not rightfully exist. As a result, the totality of claims held by governments and private creditors on the Federal Republic of Germany and its citizens, enterprises and banks – which were up for negotiation in London – can be divided into two categories⁵:

5. For various reasons, it has been impossible to identify the exact amounts of Germany's external private and public debt. For a detailed assessment see: Gurski (1955: 24ff).

Pre-war debt

Pre-war debt consisted only to a very small degree of debts incurred during the Nazi era (1933–1945), including by the Nazi government itself. The bulk of that debt went back to reparation obligations after the First World War. The 132 billion Goldmark that the Inter-Allied Reparations Commission had originally claimed from Germany in 1921 – in reference to the Versailles Treaty of 1919 as German reparations to mainly France and the UK – had been significantly reduced by debt restructurings under the Dawes Plan (1925) and the Young Plan (1929), before the Hoover moratorium of 1931 allowed for a stay of German reparation payments, and the Lausanne conference of 1932 finally led to a cancellation of all still outstanding payment liabilities.

The Dawes and Young plans both provided for new international bonds to be issued by the German authorities, in order to finance the reduced debt service.⁶ This amounted to 7.7 billion Deutsche Mark, according to stocktaking in London. In addition, there were the debts of other public institutions and German private debtors of about 5.8 billion Deutsche Mark, so that in total, pre-war⁷ debts of 13.5 billion Deutsche Mark were established and negotiated.⁸

Post-war debt

Loans that the federal government had received after the war from Western powers, in particular the US, to finance the reconstruction amounted to about 16.2 billion Deutsche Mark. These included the Marshall Plan resources, which, unlike other European recipients, Germany had received as loans rather than grants.

6. These Dawes and Young bonds were responsible for the bulk of the pre-war debt. Unrelated to reparations were the Kreuger bonds, through which the Swedish industrialist had provided 125 million US dollars to the Weimar Republic in exchange for a 50-year monopoly on the sale of matches in Germany. Finally, there was debt related to the moratorium on short-term claims declared in 1932, to the tune of 700 million Reichsmark.

7. Because minor claims stemming from the war times have also been included in this category, »pre-1945« would have been the more accurate term. However, »pre-war/post-war« are the terms largely used in the literature; they will thus also be used in this paper.

8. These figures follow the calculations by Kampffmeyer (1987). Due to the uncertainty of some data, some lower amounts are also being presented, mostly based on Gurski (1955). Uncertainties result not only from the conversion rates between Reichsmark, Deutsche Mark, and Goldmark, but also from an inconclusive verification of the claims process, because some creditors acceded only later to the Agreement.

So the negotiations in London concerned a total external debt of DM 29.7 billion. Because the London Debt Agreement was a »framework agreement«, it did not state any claims amounts in itself. Although the Agreement had the status of a binding and enforceable treaty, actual amounts would only be stated subsequently on a bilateral level – and then rescheduled in line with the agreement’s guidelines. This is why data on individual claims are not coherently available from one single source, but have to be compiled from individual treaties – or as in our case, from various documents related to the negotiation process, such as *aide-memoires* by individual debtors and responses by the Tripartite Commission.

One category of payment obligations had been explicitly excluded from the London negotiations: namely, any sort of reparations claims for the damages inflicted by Germany during the Second World War and registered with the Inter-Allied Reparations Commission, which had been set up in 1946, including any other claims that were immediately related to the war. With this, eventual German counterclaims regarding the behaviour of the occupation forces were also off topic in London. This approach of narrowing down the London regulations to the most traditional definition of external debt reflected the vision pursued most notably by the US. On the one hand, the USA was committed to avoiding the mistakes of 1919 – i. e., making a defeated debtor pay to an extent that threatens its political stability. On the other hand, it was pragmatic in the sense that hardly any amount would be imaginable, not to mention bearable, which could compensate for the enormous material destruction German aggression had brought to a great number of countries inside and outside Europe.⁹

Technically, however, the distinction between war-related and non-war-related claims has not always been clear-cut.¹⁰ Overall, the common strategy between the German delegation and the Tripartite Commission was to ward off borderline cases as much as possible.

9. In that sense, the London Debt Agreement was a logical consequence of the Paris Agreement of 1946, which had largely confined reparations payments to the seizure of German merchant vessels and German property abroad.

10. In fact, there were tricky cases like claims against the Austrian Raiffeisen-Bank for its regular businesses in Slovenia during the occupation. While Austria rejected this Yugoslavian claim with the argument that no Austrian state had existed between 1938 and 1945, West Germany rejected responsibility because it considered the mandatory transfer into Reichsmark of the compulsory loans, which Raiffeisen had enforced upon their Slovenian affiliates, to be a war-related measure; the result of which could not be an item on the London agenda.

1.3 The London Debt Conference

A Germany destroyed by war, which also saw the dismantling of part of its industry, was incapable of paying its external public debts in the post-war years. For this reason, the US, UK, and France had already negotiated with the West German government in December 1951 a reduction in the repayments of the economic assistance given after 1945. However, this reduction could only come into effect after the Federal Republic of Germany had also agreed to a settlement with regard to its pre-war debts. In order to reach such a comprehensive solution, all of the German Reich’s pre-war foreign debts, its constituent states (*Länder*), and German private debtors with foreign governments, commercial banks and private bond investors were to be restructured at a central conference. Even though this conference was materially only concerned with pre-war debts, it had the potential to reach an agreement on all of Germany’s liabilities, because of the link between the agreement concerning post-war economic assistance, which had already been negotiated and the agreement that was to be sought at the conference itself. With this in mind, and also because the pre-war debts actually consisted of a whole series of individual agreements about different credits and loans, it would be more accurate to refer to the »London Debt Agreements« rather than the »London Debt Agreement«. However, because the singular term is being widely used and because there is a case for considering the debt reduction as a coherent process, we use the term »London Debt Agreement« throughout this paper.

The Conference on German External Debts, as the London Debt Conference was officially called, met from 28 February to 28 August 1952 in London (with a six-week break). Taking part were representatives from 20 creditor countries (three further countries sent observers), plus Germany and the Bank for International Settlements (BIS). Representatives of private creditors were part of their countries’ official delegations through most but not all of the negotiation process. The driving force behind these negotiations was the US government. Among other objectives, the US wanted to prevent a long, drawn-out, and smouldering discussion about the Federal Republic’s old debts, which would obstruct Germany’s access to international capital markets, while keeping the country dependent on public loans from across the Atlantic.

1.4 The Agreed Debt Relief for Germany

In the agreement itself, both the pre- and post-war debts were each reduced by about half.

Pre-war debts were reduced from 13.5 billion to 7.3 billion Deutsche Mark – i. e., by 46 per cent. Post-war debts that had been negotiated prior to London were reduced from 16.2 billion to slightly less than 7 billion Deutsche Mark – i. e., by 51.5 per cent (Kampffmeyer 1987: 55).¹¹

The remaining debt therefore totalled 14.45 billion Deutsche Mark. From this remaining debt stock, further relief was granted through a reduction in interest: 2.5 billion remained interest free, 5.5 billion carried an interest rate of 2.5 per cent, and the remaining 6.3 billion Deutsche Mark an average rate of between 4.5 per cent and 5 per cent. Compound interest was not charged for the long period during which the debt had not been serviced. This was the case from 1934 onwards, when the Nazis ceased to make any payments on the Dawes and Young bonds to foreign creditors, due to the German Central Bank's lack of hard currency reserves.¹²

The repayment plan agreed in London initially allowed for a five-year grace period, as it were, between 1953 and 1957, in which annual amounts of 567.2 million Deutsche Mark had to be paid. Throughout this period, each creditor had to decide, whether they wanted to receive interest or principle, but the fixed ceiling could not be overstepped (Abs 1990a: 19). From 1958, fixed repayment and interest rates of 765 million Deutsche Mark were to be made.¹³ Interest arrears were reduced by one-third and capitalised; current interest rates were reduced by one-quarter and were locked into the 4 per cent to 5 per cent range (Bundeskabinett 1952). This means that annual payments in terms of external debt service were set at fairly low levels, representing never more than 5 per cent of Germany's annual export earnings.

11. Post-war loan amounts of 5.04 billion Deutsche Mark were confirmed through the agreement to be owed to the US, 1.7 billion to the UK, and 50 million to France. See also: Bundesministerium der Finanzen (2003: 91 ff).

12. Respectively, the »Konversionskasse«, which the Nazi government had established mid-1933 as an instrument to control the critical reserve situation.

13. From this, 391 million and 550 million Deutsche Mark respectively had to be paid as public debt by the central government; the rest was charged to private debtors.

In the interests of an arrangement that would be coherent and uniformly binding, a principle of equal treatment for all debtors and creditors was agreed. All claimants had to accept equivalent cuts in interest and repayment demands. All non-public debtors benefited from the same relief, which was conceded for the public sector.

Formally, the agreement was to be enacted through ratification in Germany plus the three Allied Powers. Further signatories would not have any influence on its validity or design. This regulation was made in the interest of a speedy ratification, which in turn came in the interest of a renewed German access to international capital markets (Rombeck-Jaschinsky 2005: 346). On 16 September 1953 the Agreement came into force.

2. Debt Relief for Germany in the Perspective of Subsequent Sovereign Debt Crises

In order to assess and illustrate the merits and shortcomings of the London Debt Agreement for Germany, we have selected three sovereign debt crises and restructurings from the recent past. We have chosen **Iraq** (2004–2005), as a case of post-war reconstruction after regime change; **Burundi** (2005), as one example of a highly indebted poor country that obtained debt relief through the HIPC-initiative; and finally **Greece** as a still ongoing sovereign debt crisis in a high-income country and member of the Eurozone. The variety of debt crises helps to identify weaknesses in individual as well as standardised procedures to deal with sovereign over-indebtedness, assessed against the London Debt Agreement:

- Greece is the most dramatic case of over-indebtedness in the Eurozone during the on-going Euro-crisis. Greece's debt stood at roughly 120 per cent of GDP, when the government declared in 2009 that it would no longer be able to shoulder its current debt service without external help. Greece's debt consisted primarily of government bonds held by both domestic and foreign private investors. Bonds were emitted under either Greek or UK law. Characteristics of the Greek debt problem, beyond its sheer size, were the country's adherence to a joint currency, a lack of competitiveness compared to European trade partners, and an extremely poor record of financial governance.

Box 1: German Debt and German Reparations

It has occasionally been argued that Germany's debt payments need to be considered in the context of reparation and restitution payments, which Germany made towards (some) of the war victims who were partly also its creditors. As a consequence, the debt relief agreed in the London Debt Agreement will then seem less »generous« than it would have without such context.

German Reparations

Unlike after the First World War, the victors of the Second World War never agreed on a comprehensive reparations claim towards Germany. This was not only due to the lack of a peace treaty, but also to quickly arising rivalries among the Allied Powers (i. e., the Cold War), and the desire not to repeat the mistake committed at Versailles in 1919 – overburdening and destabilising a defeated nation. At the Paris Reparations Conference in July 1945, however, it had been agreed that the occupation forces would be entitled to both dismantle industrial infrastructure, as well as seize resources from the current production of the German economy, and to share it with all signatories in line with a distributional key among all 18 signatories. Beyond this, Germany lost about one-third of the former German Reich's territory to Poland and the Soviet Union respectively (which were not creditors under the London Debt Agreement). Thirdly, German property abroad was largely confiscated by countries that had at some stage joined the war against Germany.

It is estimated that West Germany's resource drain from these arrangements was modest – amounting to the equivalent of 2.1 billion Deutsche Mark (in 1953 prices) – because the Western Allies had soon stopped dismantling the economy in their occupation zones, postponing their reparation claims until the future signing of a peace treaty with a reunited Germany; while the GDR lost resources to the equivalent of 99 billion Deutsche Mark¹⁴ until the Soviet Union stopped the reparations in 1953, concerned over the GDR's economic viability after the June 1953 riots.

The London Debt Agreement allowed for further reparations, but postponed dealing with outstanding claims until a final settlement through a formal peace treaty with a reunited Germany could take place. Upon reunification in 1990, the Two Plus Four Agreement between the four powers (US, Soviet Union, UK, France) and the two German states did not foresee any further reparations payments. However, the reunified Germany made some belated »voluntary« payments to war victims in countries in the former Eastern Bloc, similar to the »global agreements« for the »voluntary« compensation of war victims, which West Germany had signed between 1959 and 1964 with 11 West European countries

for about 876 million Deutsche Mark.¹⁵ The German government of the time understood the Two Plus Four Agreement as closing the issue of war reparations for good.

Questionable Logic

Lumping debt and debt service together with other obligations – material or moral – of the debtor is not unique to this case. For instance, the demand for reparations for 500 years of colonialism was one line of argument used by some advocates for »Third World« debt relief in the 1980s and 1990s. Somewhat arbitrary amounts in order to compensate for centuries of oppression were claimed, which necessarily dwarfed the existing debt claims by the »North« on the »South«. Consequently, no rightful demand for payment from the former colonisers should be raised anymore. On a similar note, there have been recent attempts to resurrect Greek claims on Germany, as reparations for the damages and atrocities committed by German occupation forces between 1941 and 1945. (With the exactly opposite purpose, but logically on a similar line, creditor governments in the 1990s have argued that the stated need for debt relief by some low-income countries needed to take net ODA flows to indebted low-income countries into account).

None of these calculations actually does justice to the moral or political concerns upon which it is based. Assuming that Germany could somehow financially compensate the victims of the most ruthless aggression of the century is absurd. Consequently, even compensation payments by the Federal Government to the State of Israel and the Jewish Claims Conference (Luxembourg Agreement of September 1952) were never labelled as »reparations« in the sense of »repairing« something that was actually irreparable. It is equally unfortunate that after decades of Greek authorities' benign neglect of the war crimes committed by the later European partner Germany, those claims are now being raised in an arbitrary way, as Greece is obviously in need of funds.

Additionally, it is extremely difficult to calculate an appropriate amount for damage compensation, even if the political will to do so exists on both sides.

Finally, it needs to be considered that debt claims are essentially different from any sort of reparations claims. They are normally based on a private law contract and have individuals, corporations, or public sub-entities as partners – which may or may not be related to the particular damage that a reparation is intended to heal.

Therefore, it is highly advisable in any context to keep the various types of claims apart and to treat each of them in its own right.

14. <http://de.wikipedia.org/wiki/Reparationen> (last accessed 26.4.2013)

15. http://de.wikipedia.org/wiki/Deutsche_Wiedergutmachungspolitik (last accessed 26.4.2013)

In an initial stage, crisis resolution consisted in financing current debt service from official sources through existing as well as two newly created financial rescue mechanisms for the Eurozone (EFSF and ESM). Any debt cancellation was ruled out by the Greek governments and their creditors until June 2011, when Eurozone members suggested a 21 per cent haircut for private creditors, which had to be voluntary in order to avoid triggering an unknown amount of credit default swaps (CDS). This »voluntary« haircut has then been gradually increased to slightly above 50 per cent, before it was eventually implemented in March 2012. Substantial financing was provided by bilateral (European) and multilateral (IMF) sources.

The debt relief was then implemented through an exchange offer by the Greek authorities to bondholders and imposed upon non-consenting investors with the help of collective action clauses (CACs), which have been part and parcel of UK-law foreign bonds from the outset, and were retroactively introduced into Greek-law bonds.

At the time of the implementation of the debt exchange, the IMF expected the operation to bring the debt-to-GDP ratio down to 120 per cent by 2015 – i. e., the level of debt Greece had when it *de facto* declared itself insolvent in 2009. Under a stress-scenario, the IMF suspected that the end result would be closer to 129 per cent of GDP (IMF 2012).

The Achilles heel of the relief operation has been the coincidence of debt relief and one of the fiercest austerity programmes in modern European history. While debt was in fact cancelled to the tune of 109 billion euro, the need for new external financing of the debt exchange and the decline in public revenue triggered by the implosion of the Greek economy ate up most of this relief effect. As a result, debt indicators – measured by overall public debt in relation to the country's GDP or by the (foreign) debt service burden compared to its export earnings – improved only slightly and only temporarily, while the social disruptions caused by austerity threaten the social and political stability of the country. In December 2012, a second debt conversion operation was already necessary, because the debt-to-GDP-ratio had risen again beyond the IMF projections and stood in the range of 160 per cent. To a minor extent, this second conversion of already converted paper also implies a curtailment of official sector claims, which were the result of the first rescue packages.

- Burundi is one of 40 poor and heavily indebted countries entitled to receive comprehensive debt relief through the multilateral HIPC¹⁶ and MDRI¹⁷ debt relief initiatives. Burundi reached its decision point under HIPC in 2005 and its completion point with HIPC/MDRI in 2009. In 2006, before HIPC became effective, the country had a total external debt of 1.411 billion US dollars, which equalled 162 per cent of its GDP. HIPC and subsequent MDRI relief were supposed to bring Burundi's external debt down from some 900 per cent of annual export earnings to the HIPC target of 150 per cent. Thus, total debt relief was in the range of 85 per cent.

Two-thirds of all pre-relief claims on Burundi were held by multilateral institutions; the bulk of the remainder was held by governments, both inside and outside the Paris Club. Compliance problems with holdout private creditors, as well as freshly investing vulture funds, were thus no problem in the case of the East African nation – different from other HIPCs, such as neighbouring DRC.

After relief was implemented, Burundi proceeded to borrow abroad again and is today considered by the IMF as one of six out of 30 post-completion point HIPCs at high risk of renewed debt distress.

- Iraq was saddled with an (open) external debt of about 120 billion US dollars at the fall of Saddam Hussein's regime in 2004. Additionally 57 billion US dollars were claimed in unpaid bills from (mainly Russian) providers, and another 50 billion US dollars through reparation claims for damages committed during Iraq's occupation of Kuwait in 1990/91; those claims were registered with the UN claims tribunal (Kaiser and Queck 2004). Although the country sits on the world's third biggest oil reserves, it was clear that due to the destruction by the war, the country would be in no position to honour those commitments in the near future. Moreover, as leaders of the coalition that had toppled Saddam Hussein, the US insisted that a solution to Iraq's existing debt needed to be found, particularly

16. Heavily Indebted Poor Countries Initiative. Established by the IMF and the World Bank upon request by the G8 in 1996 and substantially amended, again upon G8 initiative in 1999.

17. Multilateral Debt Relief Initiative. Established by the IMF and the World Bank upon request from the G8 in 2005, because even the enhanced HIPC initiative had proven to be insufficient in terms of re-establishing debt sustainability in a number of heavily indebted poor countries.

with a view to the fact that the major creditors were France, Germany and Russia – i. e., exactly the three powers that had refused their participation in the war at the side of the US-led coalition. Thus, it was very much at the initiative of the US administration¹⁸ that Iraq was offered a special treatment in the Paris Club under the so-called Evian-Terms.¹⁹

The agreement that was reached in 2005 implied an extraordinary 80 per cent cancellation of club members' claims against Iraq. Like the case of Burundi, the debt reduction factor was even higher than in Germany 1953. As the table below indicates, however, it came from a substantially higher debt level. Paris Club members held 4.2 billion US dollars, while the Gulf States held another 69 billion US dollars, and a broad range of other countries – mostly from Asia and Eastern Europe – sat on a further 19 billion US dollars. The Paris Club agreement was implemented through 2004–2008 in three tranches. However, not all of the non-Paris Club members have followed suit.

3. The Qualitative Elements of Germany's Debt Relief and Their Implications

Beyond the mere dimensions of the debt relief agreed for Germany, there were certain qualitative features of the Agreement, which make it an early example of a fair and effective debt relief agreement, and which may individually or in their entirety serve as an inspiration for today's reform efforts in sovereign debt management.²⁰ In this chapter, we highlight four such elements and compare them to the negotiation process, criteria, and outcome of the three modern cases described above.

18. In fact, President Bush's special envoy James Baker bullied some of the reluctant creditors, including Germany, into the agreement.

19. Evian differs from other »terms« of the Paris Club by not setting any relief quota. Instead, it practically allows Club members to treat a debtor as ever they wish. By doing so, the Club's most powerful members, the G8, which established the Evian Terms at their annual summit in 2003, tacitly dropped the thus far sacred principle of equal treatment of equal cases, in exchange for a higher degree of flexibility in addressing »special cases« such as Iraq's. See: <http://www.clubdeparis.org/sections/types-traitement/rechelonnement/approche-d-evian> (last accessed on 18.05.2013).

20. Reforms towards a new paradigm and new mechanisms for debt relief have been discussed since the late 1980s. Presently, several processes from academia, such as the Canadian Centre for Governance Innovation (CIGI) and UN Agencies like DESA and UNCTAD are the main foci of this process. The present paper is intended to serve as an input into such process under the aegis of institutions, which are neither debtor nor creditor themselves.

Table 1: Overview of Indebtedness Indicators
Pre- and Post-relief

	Debt/GDP Pre-relief in per cent (year)	Debt/GDP Post-relief in per cent (year)
Germany	21 (1953)	6 (1958)
Burundi	162 (2006)	39 (2010)
Iraq	592 (2004)	37 (2011)
Greece (Public Sector debt)	161 (2011)	152 (2012)

Sources: IMF (2012a); Kaiser (2003); Kaiser/Queck (2004); World Bank (2013)

3.1 The Conference Set-up: Negotiations among Equals

The overall mood of both the pre-conference and the main conference was already established in the context of the German Debt Declaration of 6 March 1951. From the very outset, the German government demanded (and obtained) recognition as a partner among equals, with whom an agreement was to be negotiated rather than being decreed by the creditors and war winners. A first draft of the debt declaration prepared by the Allied »study group« was successfully rejected by the German government as unfair. The draft had given space to creditors, to unilaterally revise the intended agreement if they felt that circumstances had changed – an imbalance between the two parties of a contract, which would not sound unfamiliar to anybody who works through the Paris Club today. Without doubt, the German government's position was considerably strengthened by the fact that creditors had accepted the principle that the debt declaration to begin negotiations needed prior parliamentary approval by the West German Bundestag.²¹ More generally, the fact that the

21. As a result, the government of Chancellor Adenauer obtained (a) a proactive role of the German side in the working out of any repayment plan for the pre-war debts, (b) negotiations on equal footing on the payment of post-war debt, and (c) that Germany would only »confirm« and not »assume« pre-war debts of the Reich. This little semantic detail was indeed important because it allowed for waivers of obligations due to the territorial limitations West Germany had in comparison with the German Reich. In a letter dated 23 October 1951 to Chancellor Adenauer, the Allied High Commissions had confirmed that the territorial restrictions suffered by West Germany were to be taken into consideration when it came to defining the German capacity to pay. Adenauer did not obtain, however, a general consent of the creditors to accept in principle a balancing of German obligations with (seized) German assets abroad. Rombeck-Jaschinsky (2005: 137).

creditors themselves, and the US in particular, wanted to resolve the West German debt issue almost as badly as the Germans worked in favour of setting up negotiations among equals.

The strongest expressions of this »negotiations among equals« atmosphere was the fact that the London Debt Conference was indeed a conference, and not a »negotiation« based on terms and procedures predefined by the creditors. A minor and technical aspect is the fact that the data, upon which the complicated verification of claims process regarding the pre-war debt was based, were mainly provided by the West German Central Bank (Bank Deutscher Länder).²²

How Did Others Fare?

Burundi, like its 34 peers today, went through a regular HIPC/MDRI process, which is a standardised procedure developed by the World Bank and the IMF in 1995/6, and has since been refined, adjusted, and enhanced by its authors. The debt deal was handed down to the Burundian authorities at the decision and completion points in 2005 and 2009 respectively. Decisions about bilateral debt relief were made on the basis of the Paris Club's »Lyon« and »Cologne« terms; multilateral debt relief was based on the HIPC debt sustainability targets, as calculated by the World Bank and the IMF. Their implementation included a calculation error by the Bank staff, which ultimately cost Burundi about 11.6 million US dollars in debt relief, to which it should have been entitled according to the HIPC rules (Kaiser 2009).

No interpellation by the Burundian authorities against the creditors' unilateral decisions or any other intervention against the standardised procedure has been recorded.

Iraq was treated under the so-called Evian approach of the Paris Club. As a country that had just been defeated by coalition forces, and where the former dictator and his entourage were still on the run, Iraq's situation among the three cases politically most resembled West Germany's in 1951/3: creditors had a strong interest in the stabilisation of the country in the context of ongo-

ing global conflicts; the new rulers had to rely strongly on the political, financial, and military backing of the coalition, while some former members of the old order managed, to some extent, to preserve their positions formally or informally.

Still, while the West German government was largely treated as a partner in the debt negotiations, the outcome for Iraq was very much driven by the conflict between the US-led coalition and those creditors, who had refrained from joining the efforts to topple Saddam Hussein's regime. While inter-creditor competition and outright conflict was also present throughout the London process, the German delegation was far more able to establish its own guidelines and articulate its interests at the negotiation table in London, while the (more extensive) 80 per cent relief for Iraq was worked out in Washington and then forced upon other Paris Club members by the Bush administration. The Iraqi delegation found itself completely at the receiving end of this process. Whereas in the West German case, the need for parliamentary endorsement – which rightfully limited the administration's space for making concessions – was accepted by the creditors, in the Iraqi case, an explicit resolution by its newly elected parliament, which considered the Saddam debt as odious and therefore un-payable, was simply ignored by the Paris Club in its dealings with the government delegation (Kaiser and Queck 2004).

Greece was negotiating hard with its bondholders, and had two nearly agreed upon arrangements – for a 21 per cent and a 50 per cent haircut, respectively – before the agreement was signed between the government and the Institute of International Finance (IIF)²³ representing the private bondholders in this case. However, this direct negotiation was between the debtor government and an unofficial body allegedly representing a »majority« of holders of the majority type of debts. Greece's public creditors did not expose their own claims; however they interfered in the IIF/government negotiations at various times.

22. Rombeck-Jaschinsky (2005: 194).

23. The Institute of International Finance is formally a think tank of the major money centre banks. However, in the context of the Greek restructuring, its role went far beyond that of an advisor, and by consent of its membership it assumed de facto the role of a lead negotiator on behalf of its members. This is due to the fact that different from other cases, the bulk of Greece's bonds were concentrated in the hands of national and international banks. <http://www.iif.com/> For an extensive report on the Institute's role in the Greek restructuring see its Annual report 2012.

However, among the three cases, Greece was the one that most tried to exert leverage against its creditor nations, which had to be concerned about their banks' viabilities in the case of a Greek default. This was not least due to the political pressure exerted by a radical left, which in the 2012 parliamentary elections came very close to a majority and had a tougher stance against private and public creditors high on its agenda.

3.2 The Comprehensive Character of the London Debt Agreement

Negotiations in a forum like the Paris Club are normally confined to public and publicly guaranteed (PPG) debt. The reasons for this are both pragmatic and political. Normally, it is indeed fiscal unsustainability that urges the parties to negotiate, while private debt may not be that much of a concern. Additionally, to the narrowed participation on the debtor's side, there are often also some creditors being spared from negotiations and an eventual haircut. Until the onset of the HIPC/MDRI initiatives, this was regularly the case for all multilateral claims, whose holders insisted on their preferred – in fact, exempt – creditor status.

Different from this common practice, the London Debt Agreement considered the totality of all external debt²⁴ obligations – official and private – of the debtor country, in order to clear all impediments to an economic fresh start for the whole (West) German economy.

Already in his opening speech, German delegation leader Hermann-Josef Abs made clear that the conference needed to include all claims against Germany; otherwise there would be no way to deal with the limited German transfer capacity. The term »transfer capacity« refers to a country's ability to transfer domestically generated resources (e. g., through taxation) into foreign exchange in order to pay its debt to foreign creditors.

This principle was inherently logical and accepted by the creditors. So considerations of the German payment and transfer capacities always involved both pre- and post-war debt, and even if negotiations on both were not conducted simultaneously, Abs and the German delega-

tion constantly struggled to make sure that no agreement on the pre-war debt would be reached that did not take into account the earlier arrangement on the post-war debt. The Germans could reliably build on US support in the application of this principle.

That said, one substantial, although not debt-related payment obligation was not included into the London negotiation, namely the one related to the material compensation of Israel and Jewish communities worldwide for the integration and resettlement of uprooted and destitute Jewish refugees from Nazi Germany and other parts of Europe formerly under German rule.

Negotiations to this effect took place with representatives of the State of Israel and the Conference on Jewish Material Claims Against Germany (Jewish Claims Conference) in Wassenaar in the Netherlands, which occurred at the same time as the London conference. While fostered by Chancellor Adenauer as an important step in West Germany's return to the international community, this coincidence caused some headache for the West German delegation leader in London who feared his task of restoring German reaccess to international capital markets through a comprehensive agreement with its creditors would be impaired by a parallel arrangement with Israel, which might stress the West German transfer capacity beyond its limits.²⁵ In the agreement between the State of Israel and the Federal Republic of Germany finally signed in Luxembourg on 10 September 1952 (Luxembourg Agreement), West Germany agreed to provide Israel with goods and services worth 3 billion Deutsche Mark over a period of 14 years. Additionally, 450 million Deutsche Mark for the integration of needy Jewish Holocaust survivors outside of Israel were to be channelled through the Jewish Claims Conference.

25. Deep conflicts erupted at times between the leaders of the German delegations in London and Wassenaar over the balance between concessions in both. A tough delegation leader in the Hague, Professor Böhm accused both Abs and Adenauer of being unduly soft on London creditors while failing to honour political commitments towards Israel, which due to their moral weight should have absolute priority. (See: Leiter der deutschen Israel-Delegation bietet Rücktritt an. Interview with Professor Böhm in FR 21.5.1952) In Parliament, interestingly, the Social Democratic opposition bench was the only one, which entirely and unconditionally backed Adenauer's intention to prioritise restitution over debt payments. (See: Niederschrift über die Sitzung des Auswärtigen Ausschusses des Bundestages am 16.5.1952; Bundesarchiv, B-146-1200). When the Luxembourg Agreement was ratified in German Parliament on March 4th 1953 with only a slim majority, the opposition SPD group voted unanimously for the agreement, whereas a large part of Adenauer's governing coalition voted against it. (See http://de.wikipedia.org/wiki/Luxemburger_Abkommen last accessed 26.04.2013).

24. See Box 1 regarding other payment obligations resulting from reparations claims.

Although these payments had, indeed, not been formally considered in the debt sustainability calculations that underlay the London Debt Agreement, they never caused any critical stress later to the German balance of payments. This was partly because the bulk of the reparations paid in terms of the Luxembourg Agreement were payments in kind and therefore didn't affect Germany's transfer capacity, but partly also because of the generous conditions of the debt relief itself.

Whereas the aid to the integration of the Jewish victims was dealt with separately under the Luxembourg Agreement, the broader issue of reparations for Second World War damages caused by Nazi Germany's aggression had remained on the agenda of the London Debt Conference. However, Germany had insisted from the outset on the exclusion of any reparations- or otherwise war-related claims against Germany. At the end, creditors accepted de facto the German position as laid out by Abs, who wrote in 1959:

»There was only one point on which it proved impossible to reach an agreement with the creditors and to embody it in the final conference report – and that is the question of the political preconditions under which we could implement the debt agreement, namely the problem of reparations. (...) But the German delegation had declared – very clearly and in all seriousness – in the most important final session that Germany would not be in a position to implement the debt agreement, if demands were still to be made to it under the heading of »reparations« (Abs 1959: 18).²⁶

Although the agreement itself did not explicitly rule out any future reparations claim, the threat of a new default fulfilled its purpose. After 1953, Germany made no Second World War-related reparation payments of the kind that it had to accept after the First World War. Moreover, the German delegation had been so successful in presenting the payments offered in London as the full scale of what could be afforded, that it was actually more the London creditors, and particularly the US, which worked to stave off any reparation claims through the subsequent bilateral negotiation process (Rombeck-Jaschinsky 2005: 400ff). This was particularly apparent, when the Netherlands claimed restitutions for the »wage claims of slave labour« on the basis of the widespread practice of

slave labour, which the Nazis had practiced during the occupation. Rombeck-Jaschinsky concludes on the lack of support from other creditors: »Quite pragmatically issues of morality were subdued to those of material interest – by (almost) everybody« (2005: 414).²⁷

It should be noted that while reparations for destruction from the Second World War were not formally excluded as the German delegation had requested, the postponement of any such claims to an overall lasting arrangement on reparations served the same purpose. The federal governments left no doubt that such an arrangement needed to include full territorial sovereignty of the German government, and thus had to be postponed until after a reunification, which nobody could expect to happen any time soon in the mid-1950s. After 1990, when reunification actually happened, the Two Plus Four Agreement then ruled out any substantial war-related payments by a united German state.²⁸

The London Debt Agreement worked on the basis of state adherence, which would bind all creditors, private or official, of any signatory state through domestic legislation. In the interest of a speedy and effective process, the main negotiations were only conducted with the governments that were individually in contact with their respective bondholder and other private creditor representations. The trustees of the Dawes and Young bonds were not admitted to the main conference despite their request to be included in the negotiations. On the German side, in contrast, representatives of the private debtors were part and parcel of the official delegation.²⁹ Payments to creditors from non-signatory states were explicitly excluded.³⁰

26. Translation by *erlassjahr.de*.

27. Translation by *erlassjahr.de*.

28. The German position is best summarised in the Response of the Secretary of State in the German Treasury Karl Diller to an inquiry by MP Holger Haibach of 30 January 2003: »The victors have unilaterally taken reparations, which in their totality exceeded the amounts originally envisioned by the Potsdam Conference. (...) The Federal Government has signed the Two Plus Four Agreement under the assumption that it finally resolves the issue of reparations. The treaty does not foresee any further reparations«. (Deutscher Bundestag – 15. Wahlperiode Drucksache 15/414 – 16; translation by *erlassjahr.de*) Although this was again a treaty to which many who could potentially demand reparations were not party, it served de facto to protect Germany from any »postponed« reparations claims.

29. The general set-up being that private German debtors, were *grosso modo* – willing and able to honour old commitments thanks to the take-off of the German economy in the early 1950s. In most cases, payment problems did not consist in the raising of Deutsche Mark, but in the transfer into foreign exchange.

30. TCGD: Proposal to simplify the Intergovernmental Agreement, 10 July 1952.

In summary: Germany benefitted from a uniquely comprehensive debt restructuring. Contingent liabilities in the spectacular case of restitution to the State of Israel and the Jewish Claims Conference served as an instrument to downplay its transfer capacity. Finally, it safeguarded for itself the fiscal space to unilaterally and arbitrarily grant compensation payments of sorts, where it considered them politically useful.

How Did Others Fare?

Burundi's was a standard HIPC/Paris Club treatment: club members, the World Bank, the IMF, and the African Development Bank reduced their claims in line with the HIPC/MDRI rules. The multilateral bodies then called upon their fellow multilaterals, and the Paris Club called upon non-Club members to provide comparable treatment. At the date of the completion point, however, Saudi Arabia and Abu Dhabi as significant creditors to Burundi had not yet started negotiations with the Burundian authorities (IDA/IMF 2009: 68ff). This does not necessarily mean that these creditors continue to be paid. However, persisting claims beyond a country's debt sustainability threshold constitute by definition a threat to debt sustainability or to the legal environment, in case of an eventual litigation. Non-debt-related obligations – such as eventual war reparations in any direction – have never been considered by either party.

Iraq's negotiations were split up into two major processes, which remained unrelated to each other: the Paris Club agreement under Evian Terms and the awarding process of the United Nations Compensation Commission (UNCC). The latter dealt with claims against Iraq due to damages caused by Saddam Hussein's invasion into Kuwait in 1990. While the majority of those claims had been resolved through the commission before the US invasion into Iraq, the remaining 2 per cent in 2003 roughly amounted to 95 billion US dollars. The two processes continued to be unrelated – i.e., the Paris Club did not pay any visible regard to the outstanding reparations claims when fixing the relief quota (albeit quite generously) at 80 per cent. On the other hand, the Commission made its individual awards strictly merit-based, with no discernable reference to debt sustainability.

In the case of **Greece**, the haircut involved only the private bondholders. This group, which had held almost the totality of Greece's external debt at the onset of the

crisis, had already reduced its exposure by a considerable amount through the bailout that was financed from EFSF and IMF resources, when the haircut was finally agreed upon. An inclusion of those new public claims on Greece into the haircut has never been seriously discussed ahead of the arrangement between Greece and the creditors, represented through the Institute of International Finance (IIF).

This had far-reaching consequences for the outcome of the process. The shrinking exposure of private creditors – and thus the debt stock available for the haircut – explains the astonishingly high debt-to-GDP ratio of 120–129 per cent of GDP, which was envisaged by the IMF as the result of the deal. The agreement was simply considered to be the maximum loss that private bondholders would consent to without an involvement of official (new) claims, too.

Although the official sector claims were thus not part of the debt relief, official sector creditors did in fact make a contribution. And in that sense, the deal was indeed comprehensive: in exchange for its exclusion from the agreed-upon haircut, the official sector had to provide fresh funding (and risk exposure) equivalent of participation in the haircut. Still, the debt restructuring, was, of course, not comprehensive in the way that the London Debt Agreement or even the Burundi HIPC deal were comprehensive – i.e., through a de jure or de facto inclusion of all claims on the country into the haircut.

3.3 Debt Sustainability as a Result of Trade Surpluses

The restoration of German access to international capital markets was a central political aim of the Western Allies as much as for West Germany itself. Although the Allied High Commission had assessed the long-term German transfer capacity as very positive, a partial reduction of creditors' claims in London in the interest of a speedy resolution of the problem was preferred over simply waiting for better times.

West Germany's transfer capacity was given a great deal of attention in the London negotiations. In a discussion paper produced in July 1951 on »The Question of Ger-

31. The following is a condensed and updated version of Chapter 2 of Hersel (2001).

many's Capacity to Pay«, which the Three Power Commission presented as a contribution to the preparation for the London Preliminary Conference, it is stated that:

»Germany's ability to pay depends not only on the ability of private and governmental debtors to raise the necessary amounts in DM without inflationary consequences, but also on the ability of the national economy to cover the debts out of the current trade surplus. (...) The examination of Germany's ability to pay requires the investigation of a variety of problems including:

- (a) Germany's future production capacity with particular consideration of the production capacity for export goods and the ability to substitute the products currently imported.
- (b) The possibility of selling German goods abroad.
- (c) The probable future German trade conditions.
- (d) The internal fiscal and economic measures in Germany required to ensure an export surplus« (Auswärtiges Amt et al., 1951: 64).

Beyond the general policy of allowing Germany to recover, rebuild productivity and export capacity, and thereby become a prosperous and politically stable ally – but also a competitor in international markets – this paragraph expresses the explicit link between current debt service and a German trade surplus. This partly explains the great leniency that the US and other creditor nations showed in relation to a chronically undervalued German currency during most of the Bretton Woods era of fixed exchange rates. With reference to West Germany's permanent trade and balance of payments surpluses, the other industrial countries could have been far more insistent on the necessity of a revaluation of the Deutsche Mark. Instead, the mercantile undervaluation strategy West Germany followed was patiently tolerated until the end of the 1960s. The reason for this was expressed in the London Agreement.

Sir George Rendal, the Chairman of the Three Power Commission, declared at the beginning of the Preliminary Conference with reference to the representatives of private creditors, that

»(...) one must be aware of the difficulties which Germany was facing in respect of its budget and also its balance of payments. It would also have to be recognised that Germany was still receiving foreign aid and that new problems would arise with reference to Germany's con-

tribution to the defence of the west, and in connection with the increase in allied forces in Germany. That would inevitably lead to a limitation in the level of payments in the near future. (...) We must therefore avoid coming to an arrangement that would put the German balance of payments under so much pressure that Germany would be driven to introduce discriminatory and restrictive foreign exchange and trade policies, which had led to such unhappy consequences as we had experienced in the thirties« (Auswärtiges Amt et al., 1951: 35).

Here, one easily reads the strong desire of the creditors, not to repeat mistakes that were made after the First World War. Consequently, the final report of the main conference in August 1952 states:

»The Conference recognised the principle that the transfer of payments under the Settlement Plan implies the development and maintenance of a balance of payments situation in which those payments, like other payments for current transactions, can be financed by foreign exchange receipts from visible and invisible transactions so that more than a temporary drawing on monetary reserves is avoided. In this connection, due consideration should be given to the fact that the convertibility of currencies has not yet been re-established. The Conference therefore recognised that the development and maintenance of this balance of payments situation would be facilitated by the continuance of international cooperation to promote liberal trade policies, the expansion of world trade and the revival of the free convertibility of currencies. It recommends that due account should be taken by all concerned of the principles referred to in this paragraph. Transfers of interest and amortisation payments due under the Settlement Plan should be treated as payments for current transactions and, where appropriate, included in any arrangements relating to trade and/or payments between the Federal Republic and any of the creditor countries, regardless of whether such agreements are of a bilateral or multilateral nature« (Final Report of the Conference on German External Debt 1952: paragraphs 21 ff).

Hans Gurski, who was involved in the negotiations in London as a representative of the Federal Ministry of Finance, explains the choice of words »payments for current transactions« in his legal commentary on the London Debt Agreement (2005: 265). The term was »obviously taken from the Articles of Agreement of the

IMF« and refers to the »enforcement of payments and transfers for current international transactions«. In chapter XIX (i) of the agreement on the IMF, which the Federal Republic also joined in 1952, it states: »Payments for current transactions means payments which are not for the purpose of transferring capital«.

The payment of the debt service through capital inflow – for example, through an influx of foreign portfolio capital or through direct foreign investment – is thereby consciously excluded. Instead, both interest payments and principal repayments were to be financed through a current surplus in the balance of trade in goods and services.

Although German efforts to have an explicit paragraph on this principle in the agreement itself ultimately failed, the agreement of February 1953 uses a summary formulation in order to recognise the principles of the conference report as an outcome of the main conference. Paragraph 9 of the preamble states, with reference to the final report of the main conference, »(...) that the present agreement has been inspired by the principles and objectives set forth in the above mentioned report«.

This recognition becomes even more concrete in articles 9 and 34 of the Agreement. Article 9 is taken almost word for word from Article 22 of the conference report quoted above:

»(...) transfers of interest and amortisation payments made under the present Agreement shall be treated as payments for current transactions and, where appropriate, provided for in any bilateral and multilateral arrangements relating to trade or payments between the Federal Republic of Germany and the creditor countries«.

According to that, the German debt service paid to a creditor country should be seen from the German point of view as real imports, in the case of bilateral payment and trade agreements.

Kampffmeyer interprets this paragraph as follows:

»A commitment, or rather a claim – depending on your point of view – to an active trade balance in relation to the respective contractual partners, would thereby be justified, since the full implementation of these guidelines would mean a German balance of payments surplus of the same magnitude as the amortisation payments« (1987: 53).

The principle of having current debt service on foreign debt paid from a surplus in current trade earnings – rather than from drawing on currency reserves or through capital import – was established as a safeguard for a debtor country; which did not even need it, because subsequent to the agreement, Germany already had a trade surplus toward all its major trade partners, except for the United States.

The federal government had originally sought to include an »escape clause«, which would have allowed it to waive its commitments under the London Agreement in the case of an insufficient balance of trade surplus, and request consultations. However, the creditors emphatically objected to further concessions of that kind. A compromise solution was then found in the inclusion of a reference to the basic principles expressed in the final report, together with the possibility of consultations in the form of paragraph 9 of the preamble and Article 34 of the Agreement.³²

The federal government gave Article 34 »particular significance« among the »articles dealing with questions of transfer« in its »Memorandum on the Agreement on German Foreign Debt«, which was presented to the Bundestag together with the draft legislation for the ratification of the London Agreement in 1953 (Denkschrift 1953: 166).

At the same time, it referred once more to the final report of the main conference, in which the principle that »the payment of transfer commitments must only be made from a current surplus in the balance of trade and current accounts« had been »unanimously agreed by creditors and debtors, and by the representatives of all 31 countries« (Denkschrift 1953: 158; Abs 1991: 194).

To sum up, the London Debt Agreement makes a clear connection between debt management and trade policy. It recognises the economic reality that in the long run, a sovereign debtor can only work itself out of a foreign debt overhang through a lasting trade surplus. The London Debt Agreement leaves no doubt that the achievement of such a surplus requires an effort on the part of creditors, too.

The London Debt Agreement showed that this kind of trade policy commitment is a necessary element in any comprehensive, long-term solution to debt problems.

32. See next paragraph on arbitration as conflict resolution under the Agreement.

Even more important, however, was the fact that after this »insight into what was necessary«, the political will was there on the part of both creditors and debtors to translate the concessions made on paper into reality.

In the editing process of the Final Report, Germany insisted on a protective clause – against resistance by France and the UK – which stated that they would not rule out drawing on their own reserves in times of payment difficulties, rather than passing the buck to creditors. Germany wanted to rule out both, drawing on reserves as well as the taking out of new loans – i.e., rolling-over the debt (Rombeck-Jaschinsky 2005: 352ff). While Germany failed to have the clause in the Agreement text, the principle, as laid out above, was ultimately accepted by Britain and France and considered by West German delegation leader Abs as a »rejection of Anglo-style austerity« (1991: 195).

The result of this debt-trade-link was a substantial contribution to Germany reaching full employment very quickly, thanks to a strong export performance.

How Did Others Fare?

In none of the three countries has the above principle been explicitly included into any debt restructuring agreement.

Iraq, through its oil wealth, managed to uphold a substantial trade surplus every year subsequent to its debt reduction in 2004, except for 2009, which showed a trade deficit of 9 billion US dollars. In all other years, it produced a surplus between 5 and 17 billion US dollars, while debt service paid stayed at or below 1 billion US dollars. So, Iraq would have been quite in the same situation as Germany after 1953: a linkage between trade surplus and debt service would have been a welcome safeguard against over-indebtedness and drawing down reserves, but it would hardly have been invoked.

On the contrary, low-income **Burundi** has shown and will show, respectively, a substantial trade deficit of between 370 million US dollars and 470 million US dollars according to IMF projections from 2009, its year of relief, until 2014.³³ Had the country been able to apply the

principle of debt service payments out of trade surpluses exclusively, it could have waived practically its entire external debt service, which after the debt relief was quite modest – between 1 and 12 million US dollars annually. Those modest dimensions, again, might have rendered an additional benefit »unnecessary« to the extent that it would have been advisable to the authorities not to disrupt any relations with creditors for a modest benefit. However, from 2014 onward, debt service is projected to rise steeply into the double-digit realm, and the opportunity to waive debt service altogether in one of the several crisis scenarios outlined by the IMF for the East African high-risk country could turn out to be useful. Such an option is the more relevant for a country like Burundi, which is most vulnerable to external shocks.³⁴ In practical terms, one might have thought about promoting imports from this country by making exceptional arrangements for severely indebted countries from European trade practices.

Today, **Greece** is the single debtor country that most finds itself in the typical situation of the poor over-indebted countries of the pre-HIPC era, characterised by a persistent and serious »double deficit« – i.e., a combination of years of high fiscal deficits funded through sovereign borrowing from international sources and high current account deficits of up to 14.7 per cent of GDP (2008), leading to both to a massive build-up of unsustainable sovereign debt and accumulated foreign debt (by both the public and the private sector). Even three years into recession, IMF figures still showed a current account deficit of 10.1 per cent (23 billion euro) including a trade deficit of 6.6 per cent of GDP (15 billion euro) for 2010 (IMF 2012a: 74). According to the IMF's 2012 projections, Greece's trade balance is to turn positive by 2015/2016. Most commentators, however, agree that the IMF's calculations – already covered by strong

34. Burundi would, of course, not have been unique to benefit from such a safeguard mechanism. For the period 1990–1994 Hersel produced a model calculation that showed how much debt relief each of 66 severely or moderately indebted countries of the time would have needed, if a comparable clause like the one protecting Germany's reserves and new borrowing from being used for current debt service would have been applied (2000: 18ff). It shows that in this pre-HIPC period out of the 66 countries considered, 45 would have waived their entire debt service; 17 were in a position to finance it completely out of their trade surpluses of the period, while 4 could have obtained a substantial reduction. The need for debt relief would have been even more extensive had the calculation included all external liabilities, and not only those towards 19 bilateral creditors, which today make up the Paris Club. Liabilities towards private lenders could not be included due to lack of comprehensive data, and liabilities towards multilaterals bodies were ignored because they had no parallel in the 1951–53 situation of West Germany.

33. IMF (2012b: Table 5) and authors' calculation based on the same document.

caveats regarding further developments – are unrealistic. Hence, present discussions of »giving the country more time«.

Certainly a direct link between trade surplus and debt service would not be a silver bullet to simply waive Greek debt service indefinitely. How much effective relief it could essentially bring to the government budget would not be completely clear. Neither is it foreseeable, the extent to which a clause in line with the London Debt Agreement's might negatively affect new borrowing.

However, the option for the Greek government to waive debt service payments for time frames such as fiscal years, could have helped to overcome immediate illiquidity situations, and thus provide the breathing space for a more profound tackling of the underlying insolvency problem. And even beyond the reduction of the debt overhang, such policy space for further reaching reforms would have been extremely helpful for Greece: a formal or even tacit recognition by Greece's creditors and trade partners in the Eurozone of, first, the need for the debtor country to run current account (trade) surpluses in order to make net repayments on its foreign debt; and, second, and even more importantly, of the implications this has for them from an economic point of view, would have considerably eased the pain of Greece's adjustment process. In the context of the London Debt Agreement, the recognition that the debtor's trade surpluses necessarily needed willingness on the side of the creditors to accept trade deficits and forego market share, led to the tacit permission of Germany's mercantilist strategy of undervaluation of their currency, the Deutsche Mark. With Greece being part of a currency union, the Eurozone, this convenient instrument is not available. An alternative policy option would have been a general policy of macroeconomic rebalancing between deficit (debtor) and surplus (creditor) countries within the Eurozone, by not only cutting (unit labour) costs in the deficit countries, but by also stimulating demand and raising (unit labour) costs in the surplus countries (given that the Eurozone as a whole is such a huge economic bloc, so that its current accounts against the rest of the world will have to be balanced). Strong special incentives and massive support for productivity-raising investments in debtor countries – e.g., through EIB loans or through »frontloading« of EU structural funds – would have been another possible consequence of a recognition of shared responsibility. However, ex-

PLICIT incentives to creditor countries to import from specific deficit countries, as suggested by some, would most likely not be compatible with EU competition and international (WTO) trade law.³⁵

3.4 Commitment to Resolve Interpretational Disputes through Consultations and Dispute Resolution Mechanisms

The London Debt Agreement established not only one, but in total six arbitral dispute resolution mechanisms. Only two of them were relevant for international disputes – namely the mixed commission acc. to Annex IV of the Agreement, and the arbitration court as defined in Art. 28. During the conference, it was controversial whether such a specific body would be needed at all (Hallier 1958). It was the West German side that insisted on its creation (Rombeck-Jaschinsky 2005: 396).

While a few features and procedures differed from common arbitral standards of today – such as the need to always have an even number of judges present, representing both debtor and creditor side³⁶ – this arbitration courts was established broadly in line with common standards for arbitral procedures and located with its permanent secretariat in Koblenz. It was established with a special reference to eventual German transfer problems and established a mutual obligation to be invoked for both parties in such cases. Koblenz was a standing court, which was only invoked in very few cases; a fact that Gurski and others interpret as an expression of the Agreement's high quality, which gave rise to very few disputes in the first place (1955: 40). Cases referred, for instance, to interpretation of the currency clause under the Young Plan (Abs 1990a: 92).

In addition to formal arbitration, the London Debt Agreement provided for a negotiation space in the case that Germany felt that payments under the agreement

35. This does apply, for instance, to the – at first glance – rather bizarre and not totally serious, but economically logical proposal by prominent American economist Nouriel Roubini (»Mr Doom«) reported in the leading German tabloid. Roubini proposed that rich EU governments hand out 1,000-euro holiday vouchers to all their citizens, which could then only be spent in European crisis countries (See: *Bild* 12 June 2012). Also of – though limited – relevance is the model that Argentina applied for a short interim period, namely obliging importers to balance their imports with current individual exports, in order to secure the availability of hard currency from Argentina's Central Bank.

36. In total, the court had eight members, three of them nominated by Germany, one each by France, the UK, the US plus a president and a vice-president.

would impair its debt sustainability. The right to resume negotiations in the case of insufficient trade surpluses was included in Article 34 under the heading of »consultations«.

»In the interest of the continuing and effective carrying out of the present Agreement (...) – (A) consultations will be held between the Parties to the present Agreement principally concerned, if the Government of the Federal Republic of Germany or the government of any of the creditor countries holding a substantial share of the debts covered by this Agreement so requests. (...); (B) **if the consultations are concerned with a situation which the Federal Republic of Germany finds that it is faced with difficulties in carrying out its external obligations, attention shall be given to all relevant economic, financial and monetary considerations which relate to the ability to transfer of the Federal Republic of Germany, as influenced by both internal and external factors, and which relate to the on-going fulfilment by the Federal Republic of its obligations under the present Agreement and the Annexes thereto and under the Agreements concerning post-war economic assistance.** (...)«³⁷

In the case of a real transfer problem, as could arise from a lack of trade surpluses in relation to creditors, West Germany could insist on the consultations envisaged in Article 34 – rather than simply paying up beyond its means or incurring new debt. Corresponding to section (b), a compromise would then have had to be found between the debtor and its creditors.

Such a compromise reached through a consultative process would not have been legally binding on the participating governments, but »the outcome of the consultations would have had a similar significance to a binding commitment as a result of the authority of the committee« (Gurski 1955: 469).

How Did Others Fare?

For **Iraq**, the Paris Club agreement does not include any dispute resolution mechanism, simply because it is not a legally binding document. No impartial, extra-legal dispute resolution mechanism is provided for any of the

bilateral agreements, which are the necessary offspring of the Paris Club's agreed minutes. Those agreements allow for ordinary court appeals without any specific international body in between. Iraq did, however, have access to arbitral dispute resolution regarding the reparations claims, which were treated outside the Paris Club. This is a remarkable feature of the claims commission's work, because the element of an impartial body between debtor and creditors is explicitly already created for the verification of claims process – which, given the often unclear and controversial nature of war-related destruction – helped to ward off unfounded claims and verify valid ones, through a simplified but very effective standard procedure, before an actual consideration by the commission would be made (Deeb 2007).

However, Iraq did not have any access to an impartial conflict resolution mechanism with regard to its future debt sustainability.

Equally, there is no appeal for **Burundi** related to its arrangements with Paris Club members, or the HIPC multilateral debt relief at its various stages. In reality, the tiny East African country would have been a convincing case for an appeal: immediately after the HIPC completion point, the IMF had to admit that the most critical indicator – net present value (NPV) of debt to annual export earnings – would soon cross critical thresholds again after the implementation of the relief (IDA/IMF 2009).³⁸ The various stress scenarios would have led to an even more dramatic deterioration. Since the 2002 G8 summit in Kananaskis, the HIPC rules do allow for a country to obtain a »topping up« of debt relief in cases where »external shocks« have worsened economic prospects compared to what the IFIs had assumed during the calculation of the necessary debt relief at the country's decision point. In Burundi's case, a topping-up of 11.6 million US dollars would have been warranted according to the rules. However, when investigating the reasons for the country's deviation from the 2005 calculations, the World Bank found that the poorer outcome was not due to any natural disasters or an economic shock, such as an unforeseen deterioration of export commodity prices. Rather, it was based on a calculation error by the Bank itself, which had underestimated disbursements out of its own lending facilities at the decision point; and by the Bank's definition,

37. Emphasis added.

38. Nota bene: under the »baseline« scenario, which the IMF considers as the most likely development post-relief.

errors made in Washington are no external shocks. While 11.6 million US dollars do not seem to be a great deal, they would in fact amount to half of the country's annual education budget. Had Burundi been able to take recourse to an appeal court – like Germany had even within its own boundaries (in Koblenz) – a few more Burundian kids would possibly have been able to go to school, and the additional relief might even have improved the country's present »high risk« rating by the IMF.

As **Greece** did not obtain any comprehensive debt relief but only a 50 per cent relief by the largest individual creditor group, there would have been no basis to question the merits of the overall »solution«. Old and new bonds held by private creditors can – and probably will – of course be subjected to individual court decisions, where the creditors in particular will not want to comply with the deal negotiated between the Greek government and the International Institute of Finance (IIF).

4. Objections Raised Against the Comparison with Present-Day Sovereign Debt Crises

Incidents of sovereign over-indebtedness do, of course, differ from one case to another. So, in principle, mechanistic transfers of procedures, criteria, and benchmarks from one case to another or to all others are questionable.

However, equal treatment among indeed comparable cases is – or would be – an asset to international debt management. This is why schemes like HIPC/MDRI or the various »terms« of the Paris Club (before Evian opened the floodgates of complete flexibility in 2004) have been established – and to some extent obeyed.

Nevertheless, some counter-arguments against the modelling of principles, procedures, and criteria after the London Debt Agreement, did build on exactly that argument, namely that – independently of the concrete elements at stake – Germany 1953 had to be considered as »unique«, and could in principle not serve as model for anybody, anywhere, and at any time. This chapter deals with some of the common counter-arguments that have been raised against the transfer of lessons learned from the German case to present-day debt-relief efforts, ever since the German anti-debt movement »discovered« this precious chapter in our country's history.

»The historical situation of the time is incomparable to today's debtor states«.

History is always peculiar, and no two situations can ever be identical. However, the situation of the young Federal Republic – founded just three years before the negotiations in London started – shows some stunning parallels to many »Third World« countries of today: a fragile democracy carries a substantial old debt over from its (pre-democratic) past; economic reconstruction is challenged by the threat of a persistent and high debt service; and creditors provide relief in exchange for political loyalty.

Rather than the historical circumstances, it is the Agreement itself that reveals some striking differences: Germany was explicitly spared from any »structural adjustment« policy – i.e., budget cuts, tax increases, and so-called structural reforms in the interest of ongoing debt service payments to the outside world. Hermann-Josef Abs, the head of the German delegation to London, considered the specific provision that Germany should pay its debt service exclusively out of current trade surpluses and not by taking recourse to reserves or new debt, as an »explicit rejection of Anglo-Saxon austerity«. German trade surpluses were facilitated by its creditors and trading partners by tacitly tolerating the gross undervaluation of its currency.

»Germany's debts were of very questionable origin. Therefore they *had* to be cancelled«.

More than half of the German debt resulted from US reconstruction aid after the war. If at all, one might call those claims illegitimate, because West Germany was the only West European country that received this aid through concessional loans rather than grants. And indeed there was quite some lamenting in the German public over this »injustice«. What would particularly qualify West Germany to not only receive aid, but also even grant aid was however not discussed. Debt »odiousness« would imply that from an ethical point of view, the debt in question should never have been incurred. This would be a strange position to assume for anyone in Germany or abroad.

The smaller half of the debt had its roots in the era before the Nazi takeover in 1933. Most of it resulted from the Dawes and Young loans, which Germany had taken

out, in order to service the restructured First World War reparation debt under those two repayment plans. When the two restructurings took place, there was already wide agreement that the original reparations claim of 132 billion Gold Mark after the First World War was an economic and political folly. Dawes and Young aimed at bringing the German commitments down to a sustainable, but for the First World War victors, still acceptable level. Considering the claims of those who had provided Germany with those two loans as »odious« is legally impossible, nor does it make any political sense.

»Poorer countries of today are receiving development aid – which is far more useful than Germany’s debt relief«.

West Germany had also obtained »development aid« immediately after the war, namely through the Marshall Plan. This aid came in the form of concessional loans rather than grants. However, Germany today is also one of the few donors who provide their official development aid (ODA) through loans, except for the poorest countries.

Today’s ODA is meant to support economic development, either through project financing or budget support. Calculating it against debt relief, which is meant to overcome a situation of debt unsustainability, is contrary to ODA’s purpose.

»Germany obtained its debt relief only because of the Cold War«.

Quite correct. The agreement and its generous terms demonstrate two things: (1) the strong commitment of the Western Allies not to repeat the mistake committed after the First World War, namely destabilising the defeated enemy politically and socially by imposing an unpayable toll; (2) the ability of the Adenauer government to capitalise on West Germany’s unique position as a front-line state in the Cold War. Without this latter point, aspect (1) would still have been valid. John Maynard Keynes and other architects of the post-war global economy stressed it time and again. However, the ultimate relief might have been somewhat less generous, had it not been considered to be a contribution towards the containment of the »communist threat«.

But what does that mean? Are present-day commitments – for instance, to economic and political stability in the Eurozone or to the Millennium Development Goals – less serious than Western political interests in the 1950s?

»Debt relief was only minor and thus not even necessary for the Federal Republic«.

The cancellation of some 15 billion Deutsche Mark was not minor at all, but quite important in relation to the size of West Germany’s economy at the time. It amounted to some 80 per cent of the country’s exports – and thus hard-currency income – in 1953. It is true, however, that the debt was indeed low compared to present-day public debt levels – namely some 20 per cent of GDP. Nevertheless, this relatively low level was already to some extent the result of the recalculation of old Goldmark claims at a fairly favourable rate into Deutsche Mark – which some authors interpret also as one result of the »London process«. The West German delegation convincingly pointed out that German debt service in relation to its economic capacities would sharply rise in the near future, if the country would not be allowed to concentrate its resources on reconstruction.

»A debt relief is not sufficient in order to provide fiscal sustainability. The German case demonstrates this. Due to the negative signal sent by the debt relief, Germany was highly indebted again shortly after the signing«.

Wrong. Not least thanks to the various safeguards in the agreement and the generous debt relief, Germany had very low public and external debt indicators until the onset of the recession in the 1970s. Only from the 1980s onward, then due to the costs of the reunification and finally to the global financial crisis in 2008, Germany’s debt/GDP indicator rose to the 80 per cent range, where it is today.

»The arrangement through which Germany could limit its debt service to a trade balance surplus is not useful and no longer enforceable in today’s globalised economy«.

It did not have to be enforced after 1953, either. Thanks in part to the generous debt relief, Germany showed constant trade balance surpluses. If necessary, it could however, have been enforced through a simple stay of

payments on the part of Germany – after the consultations that were also established through the agreement. There is no reason why this should not be possible for any indebted nation of today. In fact, some debtor countries today have de facto stayed debt service payments – however, without any orderly process to resolve the conflict available to them.

To a limited degree, this kind of conditioning is being practised today through index-based bonds, whose coupon depends on the emitting country's economic development – e. g., its GDP growth. As an example, Argentina has emitted a part of its new bonds after the 2005 bond swap in the form of index-based paper: if Argentina's annual GDP growth rises above a predefined threshold, bondholders receive a supplement to their regular coupons.

»Wasn't Germany far more developed regarding its economic capacities than today's indebted states?«

No. Today's critically indebted sovereigns cover the full scale from low-income countries (such as Haiti or Burundi) to high-income countries (such as Greece or Italy).

The broad range of critically indebted countries of today demonstrates that over-indebtedness – which is a mismatch between existing debt and the debtor's economic capacities – can be a problem at any income level. Whether this mismatch occurs at an annual per capita income of 20,000 US dollars or 350 US dollars does not alter the severity of the problem for the debtor.

»Today's (poor) debtor countries have all obtained debt relief in the past.«

The crisis in 1953 was not Germany's first debt crisis in the 20th century, either. In Greece, it is presently their fifth since 1800. The fact that a country has obtained debt relief at some point in history does not say anything about its need for another one at present or in the future.

Among the countries that have benefitted from the multilateral HIPC/MDRI debt relief initiatives, there are a few the IMF considers today to be at high risk of debt distress. There are also private companies, which have undergone several bankruptcies in a row (although this not desirable, of course).

»Today's creditors are no longer states, but banks and investment funds. Consequently any debt relief would be far more harmful for the global economy.«

Wrong. Germany's debts were owed to both private and public creditors. Moreover, there is no reason why a loss, which has to be incurred by a private investor, should be more harmful for the global economy than one incurred by a sovereign creditor.

5. Learning from London

The London Debt Agreement is not a blueprint for any sovereign debt restructuring in the future. However, it holds important lessons from both its overall set-up and individual key elements. The contrast between the successful arrangement in London and the three cases we have selected as a comparison point to a few of those lessons as the most important ones:

- **Pursuing a common goal.** London implicitly established a »United Front« of all participants to the Agreement in the defence of the agreed-upon outcome. All – but first and foremost the United States – defended the principle that the restoration of Germany's economic viability was the main goal of the negotiations, and that this must not be impaired by any dissenting creditor. This helped stave off third parties' claims against the debtor, and ultimately secured that the common goal of restoring German debt sustainability could not be impaired. To this end, it was important that the London Debt Agreement, different from the Paris Club's agreed minutes, is a legally binding international treaty – even if it technically then still required implementation through bilateral agreements.

- **All types of payment obligations must be on the table.** Excluding any creditor or any type of claim from a debt restructuring is potentially counterproductive. While some commentators, notably Abs himself and Bundesministerium der Finanzen (BMF) tried to uphold the stipulation that, while interest could be restructured, principal needed to be repaid in any case and under any circumstances, in fact London provided for exactly this: post-war claims were cancelled outright by about half (BMF 1994). Pre-war debt con-

sisted to such a huge extent of past due and capitalised interest, that an interest reduction equalled a haircut for principal.

- **Comprehensiveness is an asset, when it comes to renegotiating sovereign debt.** The standards set by the London Debt Agreement in this regard have not been matched by any debt restructuring since. As a matter of principle, comprehensiveness does not work on the basis of comparable treatment clauses, but requires everybody to be – or at least feel – represented at the negotiating table. London also gives some guidance on how this can be implemented; namely through the lead role of the Tripartite Commission on German Debt (TCGD) and through their intensive consultation with the various creditor committees, which in turn represented private creditors. While such committees have also been instrumental in modern debt renegotiations, they have never again been forced to cooperate under the aegis of a comprehensive and overall negotiation process.
- **Politics matter – for better or for worse.** Debt renegotiations are and will always be influenced by their political environment. This makes »purely economic« arguments often unconvincing. Rather, political interests should be openly voiced and taken into account. This, however, requires a high degree of informational equality among participants and even stakeholders at large.
- **The debtor must be given the opportunity to earn the future debt service.** Applying the principle of debt service payments out of trade surpluses – at least as a possibility to temporarily waive payments when no current surpluses can be reached – would help to (a) stabilise debtor-creditor relations, which otherwise would only have the choice of payments beyond the debtor’s capacities and a disorderly default; (b) provide a strong incentive for a development-compatible trade policy with a potential to dampen imbalances, which most recently have brought the Eurozone to the brink of collapse.
- **Impartiality and the possibility to take recourse to impartial mechanisms, such as arbitration for the resolution of conflicts, is an asset.** Even if it is never actually invoked, it serves to impose discipline on both sides, and incentivises them to seek compromise.
- **Provide space for consideration of the »quality« of claims.** Reference to debt illegitimacy was made in two of the cases considered here, but not in the other two. In Germany, as well as in Iraq, it was indirectly successful because it supported pressure towards a far-reaching cancellation; although this was achieved in both cases without any explicit reference to debt illegitimacy. However, no coherent framework to deal with it developed. Designing a framework for taking creditor co-responsibility into account would have served to put the brakes on Greece’s slippery slope into over-indebtedness since the introduction of the euro.



References

- Abs, Hermann-Josef** (1959): Das Londoner Schuldenabkommen, in: *Zeitfragen der Geld- und Wirtschaftspolitik*. Frankfurt.
- Abs, Hermann-Josef** (1990a): *Auslandspolitik und Auslandsschulden – Erinnerungen an das Jahr 1952*. Konstanz.
- Abs, Hermann-Josef** (1990b): Der Weg zum Londoner Schuldenabkommen, in: *Föderalismus und Finanzpolitik*. Gedenkschrift für Fritz Schäffer.
- Abs, Hermann-Josef** (1991): *Entscheidungen 1949–1953. Die Entstehung des Londoner Schuldenabkommens*. Mainz-München.
- Auswärtiges Amt / Bundesministerium der Finanzen / Bundesministerium für Wirtschaft / Bundesministerium für den Marshallplan** (1951): *Deutsche Auslandsschulden. Dokumente zu den Internationalen Verhandlungen Oktober 1950 bis Juli 1951*.
- Bundeskabinett** (1952): *Protokoll der Sondersitzung am 1. August 1952*. Bonn.
- Bundesministerium der Finanzen** (1994): *Das Londoner Schuldenabkommen von 1953*. Bonn.
- Bundesministerium der Finanzen** (2003): *27. Februar 2003 – 50 Jahre Londoner Schuldenabkommen. Monatsbericht 2.2003*. Berlin.
- Deeb, Hadi Nicholas** (2007): Project 688: The Restructuring of Iraq's Saddam-Era Debt, in: *Cleary Gottlieb Stehen & Hamilton Restructuring Newsletter*, Winter 2007.
- Denkschrift zum Abkommen über Deutsche Auslandsschulden** (1953): Anlage Id der Bundestagsdrucksache 4260.
- Final Report of the Conference on German External Debt** (1952).
- Gurski, Hans** (1955): *Das Abkommen über deutsche Auslandsschulden und seine Durchführungsbestimmungen. Kommentar*, 2. Aufl., Köln.
- Hallier, Hans-Joachim** (1958): *Die zwischenstaatlichen Schiedsgerichte des Abkommens über die deutschen Auslandsschulden*. Max Planck Institut für ausländisches Recht und Völkerrecht.
- Hoffert, Alexandra** (2001): *The Indonesian Debt Accord*. Fakultät für Wirtschaftswissenschaften der Ruhr Universität Bochum. Discussion paper No. 05–01.
- Huetz-Adams, Friedel** (1998): *Das Londoner Schuldenabkommen von 1953*, Erlaßjahr 2000, Siegburg.
- Hersel, Philipp** (2001): *The London Debt Accord: Lessons for a New Trade and Debt Policy between Debtors and Creditors*. Erlaßjahr 2000. Siegburg.
- IDA/IMF** (2009): *Burundi: Completion Point Document*. Washington.
- IMF** (2012a): Greece: Request for Extended Arrangement Under the Extended Fund Facility. *IMF Country Report 12/57*; available at: <http://www.imf.org/external/pubs/ft/scr/2012/cr1257.pdf> (last accessed 18.05.2013).
- IMF** (2012b): Burundi: Seventh Review Under the Three-Year Arrangement Under the Extended Credit Facility and Request for a New Three-Year Arrangement Under the Extended Credit Facility Staff Report; Staff Supplement; Press Release on the Executive Board Discussion; and Statement by the Executive Director for Burundi; *IMF Country Report 12/28*; December 27, 2011.
- Kaiser, Jürgen** (2003): *Debts are not Destiny*. erlassjahr.de. Düsseldorf; available at: http://www.erlassjahr.de/cms/upload/englisch/dokumente/50th_anniversary/london-paper.pdf (last accessed 18.05.2013).
- Kaiser, Jürgen / Antje Queck** (2004): *Odious Debts – Odious Creditors? International Claims on Iraq*; FES Dialogue on Globalization No. 12; available at: <http://library.fes.de/pdf-files/iez/global/02018.pdf> (last accessed 18.05.2013).
- Kaiser, Jürgen** (2009): *Burundi. Schuldenerlass mit kurzlebigem Erfolg*; available at: http://www.erlassjahr.de/cms/upload/2009/dokumente/laender/Burundi_Kurztext3.pdf (last accessed on 18.05.13).
- Kampffmeyer, Thomas** (1987): *Die Verschuldungskrise der Entwicklungsländer – Probleme und Ansatzpunkte für eine Lösung auf dem Vergleichswege*, Schriften des Deutschen Instituts für Entwicklungspolitik (DIE), Band 89, Berlin.
- Rombeck-Jaschinski, Ursula** (2005): *Das Londoner Schuldenabkommen*. München.
- Suarez Buitrón, Paula** (2004): *Deuda Externa: Juego de Intereses*. Quito.
- Schill, Stephan** (2008): Der völkerrechtliche Staatsnotstand in der Entscheidung des Bundesverfassungsgerichts zu Argentinischen Staatsanleihen – Anachronismus oder Avantgarde? *Zeitschrift für ausländisches öffentliches Recht (ZaöRV)* Vol. 68, 45–67.
- World Bank** (2013): *International Debt Statistics 2013*; available at <http://data.worldbank.org/sites/default/files/ids-2013.pdf> (last accessed 18.05.2013)



Abbreviations

CAC	Collective Action Clause
CDS	Credit Default Swap
DM	Deutsche Mark (West Germany's currency from 1948; currency of reunified Germany from 1990 until 2002)
DSA	Debt Sustainability Analysis
EFSF	European Financial Stability Facility
EIB	European Investment Bank
ESM	European Stability Mechanism
GARIOA	Government and Relief in Occupied Areas (US reconstruction programme for former war enemies)
HIPC	Heavily Indebted Poor Countries' Initiative
MDRI	Multilateral Debt Relief Initiative
ODA	Official Development Aid
RM	Reichsmark (Currency of the German Reich from 1924; valid until 1948)
TCGD	Tripartite Commission on German Debt (UK, US, France)



About the author

Jürgen Kaiser is co-ordinator of the German Debt Network erlassjahr.de (j.kaiser@erlassjahr.de).

Imprint

Friedrich-Ebert-Stiftung | Dep. for Global Policy and Development
Hiroshimastr. 28 | 10785 Berlin | Germany

Responsible:
Hubert René Schillinger | Coordinator | Dialogue on Globalization

Phone: ++49-30-269-35-7415 | Fax: ++49-30-269-35-9246
<http://www.fes-globalization.org>

To order publications:
Sandra.Richter@fes.de

Global Policy and Development

The department Global Policy and Development of the Friedrich-Ebert-Stiftung fosters dialogue between North and South and promotes public and political debate on international issues in Germany and Europe. In providing a platform for discussions and consultation we aim at raising awareness of global interdependencies, developing scenarios for future trends and formulating policy recommendations. This publication is part of the working line »Global Economic Governance«, in charge: Hubert René Schillinger, Hubert.Schillinger@fes.de.

Dialogue on Globalization

Dialogue on Globalization contributes to the international debate on globalization – through conferences, workshops and publications – as part of the international work of the Friedrich-Ebert-Stiftung (FES). *Dialogue on Globalization* is based on the premise that globalization can be shaped into a direction that promotes peace, democracy and social justice. *Dialogue on Globalization* addresses »movers and shakers« both in the global South and in the global North, i. e. politicians, trade unionists, government officials, business people and journalists as well as representatives from NGOs, international organizations, and academia. *Dialogue on Globalization* is coordinated by the head office of the Friedrich-Ebert-Stiftung in Berlin and by the FES offices in New York and Geneva. The programme intensively draws on the international network of the Friedrich-Ebert-Stiftung with offices, programmes and partners in more than 100 countries. Read more at <http://www.fes-globalization.org>.

The views expressed in this publication are not necessarily those of the Friedrich Ebert Stiftung or the organizations for which the author works.

This publication is printed on paper from sustainable forestry.



ISBN 978-3-86498-584-3